



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE RD  
ARLINGTON, VA 22204

██████████  
Docket No. 6279-25  
4282-25  
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF ██████████  
USN, ██████████

Ref: (a) 10 U.S.C. § 1552  
(b) USD Memo of 25 Aug 17 (Kurta Memo)  
(c) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/ enclosures  
(2) Advisory Opinion (AO) of 29 Sep 25

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board) requesting that his discharge be upgraded and that his narrative reason for separation be changed to Secretarial Authority. Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████ reviewed Petitioner's allegations of error and injustice on 13 February 2025 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, applicable statutes, regulations, and policies, to include references (b) and (c). Additionally, the Board considered the advisory opinion (AO) furnished by qualified mental health provider. Although Petitioner was afforded an opportunity to submit a rebuttal, he chose not to do so.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. Because Petitioner's application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review the application. Petitioner previously applied to this Board for a discharge upgrade and was denied on 5 December 2022. The summary of his service remains substantially unchanged from that addressed in the Board's previous decision.

b. Petitioner enlisted in the Navy and began a period of active duty on 27 July 1992.

c. On 27 April 1993, Petitioner was subject to nonjudicial punishment (NJP) for an unauthorized absence (UA) of 14 hours, in violation of Article 86, Uniform Code of Military

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Justice (UCMJ). He was awarded 30 days restriction and extra duties with forfeitures of \$407 pay per month for two months. He was also issued administrative counseling advising him that he was being retained in the Naval Service but that further deficiencies in performance or conduct could result in processing for administrative separation.

d. On 30 September 1993, Petitioner received a second NJP for violating Article 134, UCMJ, by obtaining services through false pretenses by pretending to be the owner of wrongfully appropriated long-distance cards of two other sailors, and Article 92, UCMJ, for failure to obey a lawful order or regulation by bringing liquor on the ship. His punishment included reduction to the paygrade of E-1, forfeiture of one-half months pay per month for two months, and 45 days of restriction and extra duty.

e. On 15 December 1993, Petitioner received a third NJP for another Article 86 offense after abandoning his watch post and Article 92, UCMJ, for failure to obey an order or regulation. He was awarded an additional 30 days of restriction and extra duty.

f. Consequently, Petitioner was notified of processing for administrative separation by reason of misconduct due to commission of a serious offense and pattern of misconduct. He did not consult legal counsel and elected to voluntarily waive his right to submit a statement or to request a hearing before an administrative separation board.

g. Commanding Officer, [REDACTED] recommended that Petitioner be separated under Other Than Honorable (OTH) conditions. This recommendation provided additional context regarding the aggravating circumstances of many of Petitioner's UCMJ violations and explained that Petitioner had continued to fail to abide by Navy standards of conduct and discipline in spite of the efforts of his entire chain-of-command to help improve his performance.

h. Petitioner's discharge for the primary reason of pattern of misconduct was approved by Bureau of Naval Personnel and he was so discharged on 13 January 1994.

i. Post-service, Petitioner applied to the Naval Discharge Review Board and was denied relief on 8 May 1995. Subsequently, as explained previously, Petitioner was denied relief on his initial application to this Board.

j. Petitioner contends that his OTH discharge shocks the sense of justice in light of his post-discharge character and accomplishments. Specifically, he has served in law enforcement for 27 years, his misconduct occurred nearly 30 years ago, he is remorseful for his actions but also feels that his career was derailed by the insulting and racist remarks his first commanding officer made toward him, and he did not have the necessary support system to handle his mental health symptoms. In support of his contentions that he does not deserve to continue living with the shame of his OTH discharge, in addition to his legal counsel's brief and his personal statement, he submitted his employment information and promotion history, certification and training records, and two letters of recommendation.

k. Because Petitioner contends that a mental health condition affected his discharge, the Board also requested enclosure (2) for consideration. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical records to support his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly as it is difficult to consider misappropriation of telephone cards as a mental health condition. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion that there is insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to a mental health condition."<sup>1</sup>

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief.

The Board initially concluded Petitioner was appropriately processed for administrative separation based on his extensive record of misconduct. While the Board carefully considered Petitioner's contention for mitigation, the Board noted he did not deny committing the misconduct. Therefore, the Board determined the presumption of regularity applies to the finding that Petitioner committed the misconduct that formed the basis of his administrative separation and no error exists with his OTH characterization of service.

The Board also applied liberal consideration to Petitioner's claim that he suffered from a mental health condition, and to the effect that this condition may have had upon the conduct for which he was discharged in accordance with the Kurta Memo. Applying such liberal consideration, the Board found insufficient evidence of a diagnosis of mental health condition that may be attributed to military service. This conclusion is supported by the AO and the fact Petitioner provided no medical evidence in support of his claim. Additionally, even applying liberal consideration, the Board found insufficient evidence to conclude that the misconduct for which Petitioner was discharged was excused or mitigated by a mental health condition. In this regard, the Board simply had insufficient information available upon which to make such a conclusion and recognized the same concerns raised in the AO. Moreover, even if the Board assumed that Petitioner's misconduct was somehow attributable to a mental health conditions, the Board

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<sup>1</sup> The Board observed the AO issued as part of Petitioner's initial application to this Board mirrored this finding. That AO informed Petitioner that his mental health claims lacked substantiating medical evidence. Despite being informed of the need to supply additional evidence other than his personal statement, Petitioner again failed to provide any supporting medical evidence.

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unequivocally concluded that the severity of Petitioner's serious misconduct more than outweighed the potential mitigation offered by any mental health conditions.

In addition to applying liberal consideration to Petitioner's claimed mental health condition and its potential effect upon his conduct in accordance with the Kurta Memo, the Board also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, Petitioner's contentions, the totality of his service, the non-violent nature of Petitioner's misconduct, Petitioner's relative youth and immaturity at the time of his misconduct, the negative effect Petitioner's discharge has had on his life, Petitioner's rehabilitation efforts, his post-service record of accomplishments, Petitioner's candor and remorse<sup>2</sup>, Petitioner's service to his community through his police employment, his alleged mental health issues, the character references Petitioner provided for review, and the passage of time since his discharge.

The Board noted Petitioner's misconduct and does not condone it. However, the Board favorably observed that Petitioner has committed his post-service employment toward law enforcement and submitted extensive employment history that reflects he has performed with discipline. The Board found that the favorable factors Petitioner submitted for consideration of clemency based on his post-service character demonstrated significant rehabilitation and dedication to public service and, therefore, outweighed the misconduct evidenced by his three NJPs more than 30 years ago. Accordingly, the Board determined that it is in the interest of justice to grant partial relief with respect to Petitioner's characterization of service.

Notwithstanding the recommended corrective action, the Board found that the mitigating factors were not nearly sufficient to justify any additional equitable relief. Specifically, the Board found that Petitioner's conduct showed a complete disregard for military authority and regulations. The Board observed Petitioner was given multiple opportunities to correct his conduct deficiencies but chose to continue to commit misconduct, which led to his OTH discharge. Petitioner's conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of his command. While the Board noted that flawless service is not required to receive an Honorable characterization of service, the nature, gravity, and cumulative negative effect of Petitioner's misconduct led them to conclude that his service was not Honorable. The Board believed that it would be unjust to characterize

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<sup>2</sup> The Board acknowledged Petitioner's statement that he was remorseful for the decisions that led to his misconduct but noted that he also blamed his actions on "discrimination" from his Commanding Officer. The Board found no evidence, other than Petitioner's statement, to substantiate his contention that he was punished or administratively separated due to racial discrimination. Rather, based on Petitioner's statement, the Board found that he chose to commit misconduct based on his perception of that his commanding officer's had racially insulted him by referring to him with a slang term that historically refers to individuals of Cajun or Acadian descent, typically from Louisiana. While this term contains a word that historically may be considered racial slur if uttered singularly to an individual of black descent, the Board considered that Petitioner stated the term was uttered to him by his commanding officer in his introductory meeting in response to Petitioner's explanation that he was from [REDACTED]. The Board further noted Petitioner did not allege any other discriminatory actions by his command or commanding officer. Only that this comment was the catalyst for him wanting out of the Navy and he commenced committing misconduct as a result.

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Petitioner's less than honorable service in the same manner as the service of the thousands of service members who, unlike Petitioner, honorably completed their enlistments without engaging in misconduct warranting the early curtailment of their service. Therefore, the Board did not find an upgrade of Petitioner's discharge to Honorable to be warranted in the interests of justice. Based on the same rationale, the Board also determined Petitioner's reason for separation remains appropriate.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that, for the period ending on 13 January 1994, he was discharged with a "GENERAL (UNDER HONORABLE CONDITIONS)" characterization of service.

That no further changes be made to Petitioner's record.

A copy of this report of proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

2/24/2026

